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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
TUCCI AND SONS, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHE No. 77-125

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

A formal hearing in Tacoma, Washington on November 4, 1977 came on regularly before all Board members on an appeal of a \$250.00 civil penalty arising from an alleged violation of Section 9.15(c) of respondent's Regulation I (airborne dust).

Appellant appeared by and through its attorney, George Marsico; respondent by its attorney, Keith D. McGoffin.

Having heard the testimony and considered the exhibits and being fully advised, the Board makes the following

FINDINGS OF FACT

I

Respondent, pursuant to RCW 43.21B.260, has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II

Appellant is a sub-contractor responsible for certain work at a construction site in Fife, Washington. The site is an open, off-street, area within which, at the time hereinafter described, a private dirt roadway was used by trucks of appellant and others. Appellant, having assumed the responsibility for dust prevention measures, established and implemented a plan to place 3,000 gallons of water on the roadway three times a day, i.e., at 9:00 a.m., "at noon after lunch," and "toward the close of the working day." Such plan would, according to respondent's inspector, have ordinarily been adequate to prevent the dust from becoming airborne.

III

On August 16, 1977, one of a succession of hot, dry days, appellant caused the site to be watered in the morning. The truck which was to have performed the noon watering had a flat tire shortly before that time, but its driver failed to notify appellant or anyone at the construction site of its breakdown. In the meantime, respondent's inspector, responding to a complaint received by him at 1:05 p.m. arrived at the site about 1:25 p.m. and observed dust rising from the road because of appellant's trucks traveling thereon. Appellant, informed by the inspector of the dust problem, contacted its truck driver, learned of the

1 flat tire and immediately took action for a replacement watering
2 truck to be dispatched to the site, where it arrived by 1:45 p.m.

3 IV

4 Respondent issued its Notice of Violation and imposed a civil penalty
5 in the sum of \$250.00, citing a violation of Section 9.15(c) of
6 respondent's Regulation I, which provides:

7 It shall be unlawful for any person to cause or permit untreated
8 open areas located within a private lot or roadway to be maintained
9 without taking reasonable precautions to prevent particulate matter
from becoming airborne.

10 V

11 During the ten years of appellant's business operations, it has
12 never before been charged with having violated respondent's regulations.

13 VI

14 Any Conclusion of Law hereinafter stated which may be deemed a
15 Finding of Fact is hereby adopted as such.

16 From these Findings the Pollution Control Hearings Board comes to
17 these

18 CONCLUSIONS OF LAW

19 I

20 Respondent's regulation is violated only if appellant maintained
21 open areas within its private yard or roadway "without taking
22 reasonable precautions" to prevent dust from becoming airborne.

23 II

24 The evidence quite clearly demonstrates that appellant's planned
25 watering regimen amounted to taking reasonable precautions to prevent
dust from becoming airborne. Respondent's inspector himself found the

1 flat tire and immediately took action for a replacement watering
2 truck to be dispatched to the site, where it arrived by 1:45 p.m.

3 IV

4 Respondent issued its Notice of Violation and imposed a civil penalty
5 in the sum of \$250.00, citing a violation of Section 9.15(c) of
6 Respondent's Regulation 1, which provides:

7 It shall be unlawful for any person to cause or permit untreated
8 open areas located within a private lot or roadway to be maintained
9 without taking reasonable precautions to prevent particulate matter
10 from becoming airborne.

11 V

12 During the ten years of appellant's business operations, it has
13 never before been charged with having violated respondent's regulations.

14 VI

15 Any Conclusion of Law hereinafter stated which may be deemed a
16 Finding of Fact is hereby adopted as such.

17 From these Findings the Pollution Control Hearings Board comes to
18 these

19 CONCLUSIONS OF LAW

20 I

21 Respondent's regulation is violated only if appellant maintained
22 open areas within its private yard or roadway "without taking
23 reasonable precautions" to prevent dust from becoming airborne.

24 II

25 The evidence quite clearly demonstrates that appellant's planned
26 watering regimen amounted to taking reasonable precautions to prevent
27 dust from becoming airborne. Respondent's inspector himself found the

1 plan to be "adequate."

2 The routine plan, however, was interrupted for a time period of
3 approximately one hour because of the flat tire. We said in Weyerhaeuser
4 Company v. PSAPCA, PCMB 1076,

5 We believe that appellant did take reasonable precautions and
6 that the unforeseen breakdown did not thereby render its
7 precautions unreasonable when it acted with dispatch and
8 diligence in repairing the cause of the breakdown.

9 In effect, there was a delay of approximately one hour in watering
10 the roadway. That delay was caused by the flat tire. The appellant
11 acted with dispatch and diligence in routing an alternate watering truck
12 immediately upon learning of the unforeseen breakdown of one of its
13 trucks. Had it been otherwise, we would not conclude that appellant
14 did not violate respondent's regulation.

15 III

16 The Notice and Order of Civil Penalty should be vacated.

17 IV

18 Any Finding of Fact which should be deemed a Conclusion of Law is
19 hereby adopted as such.

20 Therefore, the Pollution Control Hearings Board issues this

21 ORDER

22 The Notice of and Order of Civil Penalty are vacated.

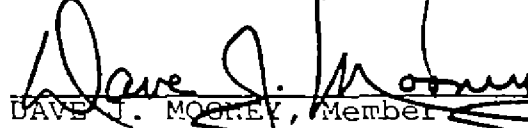
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 DATED this 22^d day of November, 1977.

2 POLLUTION CONTROL HEARINGS BOARD

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4 W. A. GISSEBERG, Chairman

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6 DAVE J. MOORE, Member

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8 CHRIS SMITH, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER